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4 JOHN BROSNAN,
5 Plaintiff,

6 v.
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8 DEUTSCHE BANK NATIONAL TRUST
9 COMPANY, et al.,
10 Defendants.

11 Case No. 14-cv-04950-EDL
12

13 **ORDER WITHDRAWING GRANT OF
14 APPLICATION TO PROCEED IN
15 FORMA PAUPERIS**

16 Re: Dkt. No. 5
17

18 Plaintiff John Brosnan filed this complaint and application to proceed in forma pauperis
19 (“IFP Application”) on November 7, 2014. On November 17, 2014, this Court GRANTED
20 Plaintiff’s IFP Application. On December 12, 2014, Plaintiff consented to magistrate judge
21 jurisdiction pursuant to 28 U.S.C. § 636(c).¹ For the reasons set forth below, the Court
22 WITHDRAWS its order finding compliance with 28 U.S.C. § 1915 and directing the U.S. Marshal
23 for the Northern District of California to serve Defendants in this case, and DISMISSES the
24 complaint without prejudice.

25 Under 28 U.S.C. § 1915(a), “[a]ny court of the United States may authorize the
26 commencement . . . of any suit . . . without prepayment of fees and costs or security therefor, by a
27 person who makes affidavit that he is unable to pay such costs or give security therefor.” The
28 court may dismiss a case sua sponte if the court determines that the party applying for in forma
pauperis status has filed a frivolous action or that the action fails to state a claim on which relief

26 ¹ To the extent that this order is dispositive, the Court does not require the consent of Defendants
27 because Defendants have not been served and therefore are not parties under the meaning of 28
U.S.C. § 636(c). See Ornelas v. De Frantz, 2000 WL 973684, *2, n.2 (N.D. Cal. 2000) (citing
Neals v. Norwood, 59 F.3d 530, 532 (5th Cir. 1995) (magistrate judge had jurisdiction to dismiss
prisoner’s civil rights action without consent of the defendants because the defendants had not
been served yet and therefore were not parties)).

1 may be granted. 28 U.S.C. § 1915(e)(2); Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989).
2 Dismissal on these grounds is often made sua sponte prior to the issuance of process, so as to spare
3 prospective defendants the inconvenience and expense of answering such complaints. Neitzke v.
4 Williams, 490 U.S. 319, 324 (1989).

5 On April 5, 2011, Plaintiff was sentenced to 40 months in custody, and three years of
6 supervised release for violations of 18 U.S.C. §§ 1343, 1503, 1623(a), and 1028(A)(a)(1). (See
7 United States of America v. Brosnan, 10-CR-68-WHA, Dkt. 170.) On August 11, 2014,
8 Plaintiff's supervised release was modified to include the requirement that Plaintiff "shall seek the
9 Court's permission in advance of filing any civil lawsuits, except for a collateral attack associated
10 with this criminal case." (Id. Dkt. 302.) On December 10, 2014, summons was issued for
11 Plaintiff to appear for a potential violation of the conditions of his supervised release due to the
12 filing of this civil lawsuit. (Id. Dkt. 305.)

13 Plaintiff failed to inform this Court of this condition of his supervised release.
14 Furthermore, there is no indication that Plaintiff received permission of the District Judge in his
15 criminal case prior to filing this civil lawsuit. Consequently, the Court hereby WITHDRAWS its
16 order finding compliance with 28 U.S.C. § 1915 and directing the U.S. Marshal for the Northern
17 District of California to serve Defendants and DISMISSES this case without prejudice. Any
18 amended complaint may only be filed with permission from the District Judge in Plaintiff's
19 criminal case, United States of America v. Brosnan, 10-CR-68-WHA, and must be filed within
20 two weeks of the District Judge's order granting Plaintiff said permission. A denial of permission
21 to file this lawsuit by the District Judge shall have the effect of dismissing this case with prejudice.

22 **IT IS SO ORDERED.**

23 Dated: December 19, 2014

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25 ELIZABETH D. LAPORTE
26 United States Magistrate Judge
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